

HOUSE SUBSTITUTE
FOR
HOUSE BILL NO. 1602
AN ACT

2 To repeal sections 444.762, 444.765, 444.767,
3 444.770, and 444.787, RSMo, and to enact in
4 lieu thereof five new sections relating to
5 environmental regulation, with penalty
6 provisions.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
8 AS FOLLOWS:

9 Section A. Sections 444.762, 444.765, 444.767, 444.770, and
10 444.787, RSMo, are repealed and five new sections enacted in lieu
11 thereof, to be known as sections 444.762, 444.765, 444.767,
12 444.770, and 444.787, to read as follows:

13 444.762. It is hereby declared to be the policy of this
14 state to strike a balance between surface mining of minerals and
15 reclamation of land subjected to surface disturbance by surface
16 mining, as contemporaneously as possible, and for the
17 conservation of land, and thereby to preserve natural resources,
18 to encourage the planting of forests, to advance the seeding of
19 grasses and legumes for grazing purposes and crops for harvest,
20 to aid in the protection of wildlife and aquatic resources, to
21 establish recreational, home and industrial sites, to protect and
22 perpetuate the taxable value of property, and to protect and
23 promote the health, safety and general welfare of the people of

1 this state. Nothing in this policy shall be construed to declare
2 the purpose of the Land Reclamation Act as regulation of the
3 excavation of minerals or fill dirt for the purpose of
4 construction of recreational, home, commercial, and industrial
5 facilities at the site of the excavation, as unrelated to surface
6 mining or reclamation of land subsequent to the surface mining of
7 minerals.

8 444.765. Wherever used or referred to in sections 444.760
9 to 444.790, unless a different meaning clearly appears from the
10 context, the following terms mean:

11 (1) "Affected land", the pit area or area from which
12 overburden shall have been removed, or upon which overburden has
13 been deposited after September 28, 1971. When mining is
14 conducted underground, affected land means any excavation or
15 removal of overburden required to create access to mine openings,
16 except that areas of disturbance encompassed by the actual
17 underground openings for air shafts, portals, adits and haul
18 roads in addition to disturbances within fifty feet of any
19 openings for haul roads, portals or adits shall not be considered
20 affected land. Sites which exceed the excluded areas by more
21 than one acre for underground mining operations shall obtain a
22 permit for the total extent of affected lands with no exclusions
23 as required under sections 444.760 to 444.790;

24 (2) "Beneficiation", the dressing or processing of minerals
25 for the purpose of regulating the size of the desired product,

1 removing unwanted constituents, and improving the quality or
2 purity of a desired product;

3 (3) "Commercial purpose", the purpose of extracting
4 minerals for their value in sales to other persons or for
5 incorporation into a product;

6 (4) "Commission", the land reclamation commission in the
7 department of natural resources;

8 (5) "Construction", construction, erection, alteration,
9 maintenance, or repair of any facility including but not limited
10 to any building, structure, highway, road, bridge, viaduct, water
11 or sewer line, pipeline or utility line, and demolition,
12 excavation, land clearance, and moving of minerals or fill dirt
13 in connection therewith;

14 [(3)] (6) "Director", the staff director of the land
15 reclamation commission;

16 (7) "Excavation", any operation in which earth, minerals,
17 or other material in or on the ground is moved, removed, or
18 otherwise displaced for purposes of construction at the site of
19 excavation, by means of any tools, equipment, or explosives and
20 includes, but is not limited to, backfilling, grading, trenching,
21 digging, ditching, drilling, well-drilling, auguring, boring,
22 tunneling, scraping, cable or pipe plowing, plowing-in, pulling-
23 in, ripping, driving, demolition of structures, and the use of
24 high-velocity air to disintegrate and suction to remove earth and
25 other materials. Excavation or removal of overburden for

1 purposes of mining for a commercial purpose or for purposes of
2 reclamation of land subjected to surface mining is not included
3 in this definition;

4 (8) "Fill dirt", material removed from its natural location
5 through mining or construction activity, which is a mixture of
6 unconsolidated earthy material, which may include some minerals,
7 and which is used to fill, raise, or level the surface of the
8 ground at the site of disposition, which may be at the site it
9 was removed or on other property, and which is not processed to
10 extract mineral components of the mixture. Backfill material for
11 use in completing reclamation is not included in this definition;

12 (9) "Land improvement", work performed by or for a public
13 or private owner or lessor of real property for purposes of
14 improving the suitability of the property for construction at an
15 undetermined future date, where specific plans for construction
16 do not currently exist;

17 [(4)] (10) "Mineral", a constituent of the earth in a solid
18 state which, when extracted from the earth, is usable in its
19 natural form or is capable of conversion into a usable form as a
20 chemical, an energy source, or raw material for manufacturing or
21 construction material. For the purposes of this section, this
22 definition includes barite, tar sands, and oil shales, but does
23 not include iron, lead, zinc, gold, silver, coal, surface or
24 subsurface water, fill dirt, natural oil or gas together with
25 other chemicals recovered therewith;

1 (11) "Mining", the removal of overburden and extraction of
2 underlying minerals or the extraction of minerals from exposed
3 natural deposits for a commercial purpose, as defined by this
4 section;

5 [(5)] (12) "Operator", any person, firm or corporation
6 engaged in and controlling a surface mining operation;

7 [(6)] (13) "Overburden", all of the earth and other
8 materials which lie above natural deposits of minerals; and also
9 means such earth and other materials disturbed from their natural
10 state in the process of surface mining other than what is defined
11 in subdivision [(4)] (10) of this section;

12 [(7)] (14) "Peak", a projecting point of overburden created
13 in the surface mining process;

14 [(8)] (15) "Pit", the place where minerals are being or
15 have been mined by surface mining;

16 (16) "Public entity", the state of Missouri or any officer,
17 official, authority, board, or commission of the state and any
18 county, city, or other political subdivision thereof, or any
19 institution supported in whole or in part by public funds;

20 (17) "Quarry", any open pit or land disturbance whose
21 primary business purpose is the commercial surface mining of
22 minerals for purposes of being processed and sold to public
23 entities or private persons. A quarry operation includes, but is
24 not limited to, blasting, mining, screening, sorting, crushing,
25 milling, stockpiling, and weight scales or other means of

1 measuring the quantity of minerals sold;

2 [(9)] (18) "Refuse", all waste material directly connected
3 with the cleaning and preparation of substance mined by surface
4 mining;

5 [(10)] (19) "Ridge", a lengthened elevation of overburden
6 created in the surface mining process;

7 [(11)] (20) "Site" or "mining site", any location or group
8 of associated locations where minerals are being surface mined by
9 the same operator;

10 [(12)] (21) "Surface mining", the mining of minerals for
11 commercial purposes by removing the overburden lying above
12 natural deposits thereof, and mining directly from the natural
13 deposits thereby exposed, and shall include mining of exposed
14 natural deposits of such minerals over which no overburden lies
15 and, after August 28, 1990, the surface effects of underground
16 mining operations for such minerals. For purposes of the
17 provisions of sections 444.762 to 444.787, surface mining shall
18 not be construed to mean excavations to move minerals or fill
19 dirt within the confines of the real property for construction at
20 the site where excavation occurs or to remove minerals or fill
21 dirt from the real property in preparation for construction at
22 the site of excavation.

23 444.767. 1. The commission may:

24 (1) Adopt and promulgate rules and regulations pursuant to
25 section 444.530 and chapter 536, RSMo, respecting the

1 administration of sections 444.760 to 444.790 and in conformity
2 therewith;

3 (2) Encourage and conduct investigation, research,
4 experiments and demonstrations, and collect and disseminate
5 information relating to strip mining and reclamation and
6 conservation of lands and waters affected by strip mining;

7 (3) Examine and pass on all applications and plans and
8 specifications submitted by the operator for the method of
9 operation and for the reclamation and conservation of the area of
10 land affected by the operation;

11 (4) Make investigations and inspections which are necessary
12 to ensure compliance with the provisions of sections 444.760 to
13 444.790;

14 (5) Conduct hearings pursuant to sections 444.760 to
15 444.790 and may administer oaths or affirmations and subpoena
16 witnesses to the inquiry;

17 (6) Order, after hearing, the revocation of any permit and
18 to cease and desist operations for failure to comply with any of
19 the provisions of sections 444.760 to 444.790 or any corrective
20 order of the commission;

21 (7) Order forfeiture of any bond for failure to comply with
22 any provisions of sections 444.760 to 444.790 or any corrective
23 order of the commission or other order of the commission;

24 (8) Cause to be instituted in any court of competent
25 jurisdiction legal proceedings for injunction or other

1 appropriate relief to enforce the provisions of sections 444.760
2 to 444.790 and any order of the commission promulgated
3 thereunder;

4 (9) Retain, employ, provide for, and compensate, within the
5 limits of appropriations made for that purpose, such consultants,
6 assistants, deputies, clerks, and other employees on a full- or
7 part-time basis as may be necessary to carry out the provisions
8 of sections 444.760 to 444.790 and prescribe the times at which
9 they shall be appointed and their powers and duties;

10 (10) Study and develop plans for the reclamation of lands
11 that have been strip mined prior to September 28, 1971;

12 (11) Accept, receive and administer grants or other funds
13 or gifts from public and private agencies and individuals,
14 including the federal government, for the purpose of carrying out
15 any of the functions of sections 444.760 to 444.790, including
16 the reclamation of lands strip mined prior to August 28, 1990.
17 The commission may promulgate such rules and regulations or enter
18 into such contracts as it may deem necessary for carrying out the
19 provisions of this subdivision;

20 (12) Budget and receive duly appropriated moneys for
21 expenditures to carry out the provisions and purposes of sections
22 444.760 to 444.790;

23 (13) Prepare and file a biennial report with the governor
24 and members of the general assembly;

25 (14) Order, after hearing, an operator to adopt such

1 corrective measures as are necessary to comply with the
2 provisions of sections 444.760 to 444.790.

3 2. The commission shall have no authority under the
4 provisions of sections 444.762 to 444.787 to regulate the
5 excavation of minerals or fill dirt for the purposes of
6 construction at the site of excavation, as unrelated to
7 reclamation of land subsequent to the surface mining of minerals.

8 3. The commission shall have no authority to regulate
9 commerce in the sale of minerals or to implement or enforce
10 regulations or policies for the purpose of protecting or
11 establishing markets for one or more operators of surface mining
12 operations.

13 4. The powers authorized by this section shall be utilized
14 to promote the reclamation of land subjected to disturbance by
15 surface mining for purposes of restoration of land for
16 recreational, residential, commercial, industrial, or other
17 beneficial use subsequent to mining and to promote and protect
18 the health, safety, and general welfare of the people of this
19 state in relation to surface mining.

20 444.770. 1. It shall be unlawful for any operator to
21 engage in surface mining without first obtaining from the
22 commission a permit to do so, in such form as is hereinafter
23 provided, including any operator involved in any gravel mining
24 operation where the annual tonnage of gravel mined by such
25 operator is less than five thousand tons.

1 2. Sections 444.760 to 444.790 shall apply only to those
2 areas which are opened on or after January 1, 1972, or to the
3 extended portion of affected areas extended after that date. The
4 effective date of this section for minerals not previously
5 covered under the provisions of sections 444.760 to 444.790 shall
6 be August 28, 1990.

7 3. All surface mining operations where land is affected
8 after September 28, 1971, which are under the control of any
9 government agency whose regulations are equal to or greater than
10 those imposed by section 444.774, are not subject to the further
11 provisions of sections 444.760 to 444.790, except that such
12 operations shall be registered with the land reclamation
13 commission.

14 4. Any portion of a surface mining operation which is
15 subject to the provisions of sections 260.200 to 260.245, RSMo,
16 and the regulations promulgated thereunder, shall not be subject
17 to the provisions of sections 444.760 to 444.790, and any bonds
18 or portions thereof applicable to such operations shall be
19 promptly released by the commission, and the associated permits
20 canceled by the commission upon presentation to it of
21 satisfactory evidence that the operator has received a permit
22 pursuant to section 260.205, RSMo, and the regulations
23 promulgated thereunder. Any land reclamation bond associated
24 with such released permits shall be retained by the commission
25 until presentation to the commission of satisfactory evidence

1 that:

2 (1) The operator has complied with sections 260.226 and
3 260.227, RSMo, and the regulations promulgated thereunder,
4 pertaining to closure and postclosure plans and financial
5 assurance instruments; and

6 (2) The operator has commenced operation of the solid waste
7 disposal area or sanitary landfill as those terms are defined in
8 chapter 260, RSMo.

9 5. Notwithstanding the provisions of subsection 1 of this
10 section, any political subdivision which uses its own personnel
11 and equipment or any private individual for personal use may
12 conduct in-stream gravel operations without obtaining from the
13 commission a permit to conduct such an activity.

14 6. Notwithstanding any commission rule, policy, or
15 interpretation to the contrary, no public entity, private person,
16 or contractor or subcontractor to such public entity or private
17 person shall be required to obtain a permit under this section
18 for the purpose of moving minerals or fill dirt within the
19 confines of real property where excavation occurs for purposes of
20 construction or to remove minerals or fill dirt from the real
21 property as incidental to the primary purpose of construction at
22 the site of excavation. It shall be a rebuttable presumption
23 that excavations are for the purposes of construction if:

24 (1) Excavation, moving, or removing of minerals or fill
25 dirt is performed by the public entity, private person, or a

1 contractor to such public entity or private person or by a
2 subcontractor, pursuant to engineering plans and specifications
3 for construction on the real property, which were prepared by an
4 architect, professional engineer, or landscape architect licensed
5 pursuant to chapter 327, RSMo; or

6 (2) There is a written contract between a contractor and a
7 public entity or private person or between a contractor and
8 subcontractor requiring excavation for purposes of construction,
9 which establishes dates for completion of the work or portions of
10 the work, which specifies the terms of payment for work, and
11 requires the excavation, moving, or removing of minerals or fill
12 dirt for purposes of construction.

13 7. It shall be a rebuttable presumption that excavations
14 purported to be for the purposes of construction are surface
15 mining if minerals removed from the site are in quantities
16 greater than required to perform on engineering plans or
17 specifications or to comply with work required by a written
18 contract.

19 8. Any private person, lessor, public entity, contractor,
20 or subcontractor engaged in land improvement involving the
21 displacement, moving, or removal of minerals and fill dirt may or
22 may not be required to obtain a surface mining permit pursuant to
23 a determination by the commission as to whether activity on the
24 real property constitutes surface mining.

25 (1) It shall be a rebuttable presumption that land

1 improvement activities are for the purpose of mining if:

2 (a) The real property has been designated as a surface mine
3 by the federal Mine Safety and Health Administration; or

4 (b) Minerals from the property are sold to other persons on
5 a frequent or ongoing basis as demonstrated by financial records
6 of the property owner or purchasers of minerals; or

7 (c) A pit, peak, or ridge as defined in land reclamation
8 laws persists at the property without the property being leveled
9 or filled as consistent with plans, drawings, or maps for land
10 improvement and which endangers the health, safety, or welfare of
11 the general public or constitutes a public nuisance;

12 (2) It shall be a rebuttable presumption that land
13 improvement activities are not for the purposes of mining and do
14 not require a permit if:

15 (a) Minerals removed from the site are excess minerals that
16 cannot be used on-site for any practical purpose and at no time
17 are subject to crushing, screening, or other means of
18 beneficiation with the exception of removal of tree limbs and
19 stumps; and

20 (b) The real property has been approved by a county, city,
21 or other recognized planning and zoning authority for designated
22 use other than as a quarry or surface mine; or

23 (c) Surety bonds or other financial assurances have been
24 provided by the owner of the property as required by a city or
25 county for purposes other than mining; or

1 (d) Performance or payment bonds have been provided by a
2 contractor as required by a public entity pursuant to section
3 107.170, RSMo; or

4 (e) The land improvement is for the purpose of preparing
5 the real property for tilling of the soil and planting of crops
6 or other agricultural purposes;

7 (3) The commission shall promulgate rules further defining
8 when land improvement requires or does not require a surface
9 mining permit. Any rule or portion of a rule, as that term is
10 defined in section 536.010, RSMo, that is created under the
11 authority delegated in this section shall become effective only
12 if it complies with and is subject to all of the provisions of
13 chapter 536, RSMo, and, if applicable, section 536.028, RSMo.
14 This section and chapter 536, RSMo, are nonseverable and if any
15 of the powers vested with the general assembly pursuant to
16 chapter 536, RSMo, to review, to delay the effective date, or to
17 disapprove and annul a rule are subsequently held
18 unconstitutional, then the grant of rulemaking authority and any
19 rule proposed or adopted after August 28, 2004, shall be invalid
20 and void.

21 9. If the director or staff determines that a surface
22 mining permit is required for real property which is purported to
23 be for purposes of construction or land improvement not requiring
24 a surface mining permit pursuant to this section, such
25 determination shall be communicated to the owner of the property

1 by letter stating the reasons for such determination. Upon
2 request of the person receiving the letter, an informal
3 conference shall be scheduled with the director within fifteen
4 calendar days to discuss the determination. Following the
5 informal conference, the director shall issue a written
6 determination regarding his or her findings of fact no later than
7 thirty calendar days after the date of the conference. If the
8 director determines that a surface mining permit is required and
9 the person disagrees with that decision, upon written request,
10 the person may request to appear before the commission at its
11 next regular meeting. Such written request shall be filed within
12 thirty calendar days of receipt of the director's written
13 determination except when the thirtieth day would be later than
14 the date of the next regularly scheduled commission meeting the
15 written request shall be filed at least seven days prior to the
16 commission meeting unless the director and the person filing the
17 request mutually agree to place the matter on the commission's
18 agenda for a later meeting. The commission shall issue a written
19 determination as to whether a surface mining permit is required
20 under Missouri law within thirty calendar days after the
21 commission meeting. The written determination may be appealed as
22 provided under this chapter.

23 10. Until a final determination has been issued under the
24 process established under subsection 9 of this section, the
25 person receiving a letter stating the reasons a mining permit is

1 required may continue activity at the site in dispute. If the
2 final written determination is that a permit is required all fees
3 otherwise provided by statute or rules of the commission shall
4 apply. If the determination is that no permit is required no
5 permit fees shall be required by the director or commission.

6 11. The burden of proof to establish that a permit is
7 required shall be on the director and the commission regarding
8 rebuttable presumptions created under subsections 6 and 7 of this
9 section and subdivision (2) of subsection 8 of this section. The
10 burden of proof to establish that a permit is not required shall
11 be on the person receiving a written determination that a permit
12 is required regarding the rebuttable presumption created under
13 subdivision (1) of subsection 8.

14 12. The process set out in subsections 8 to 10 of this
15 section for determining if a mining permit is required shall not
16 be subject to the hearing requirements of section 444.789.

17 444.787. 1. The commission shall investigate surface
18 mining operations in the state of Missouri. If the
19 investigations show that surface mining is being or is going to
20 be conducted without a permit in violation of sections 444.760 to
21 444.790 or in violation of any revocation order, and the
22 commission has not issued a variance, the commission shall
23 request the attorney general to file suit in the name of the
24 state of Missouri for an injunction and civil penalties not to
25 exceed one thousand dollars per day for each day, or part

1 thereof, the violation has occurred. Suit may be filed either in
2 the county where the violation occurs or in Cole County.

3 2. If the investigation shows that a surface mining
4 operation for which a permit has been issued is being conducted
5 contrary to or in violation of any provision of sections 444.760
6 to 444.790 or any rule or regulation promulgated by the
7 commission or any condition imposed on the permit or any
8 condition of the bond, the director may by conference,
9 conciliation and persuasion endeavor to eliminate the violation.
10 If the violation is not eliminated, the director shall provide to
11 the operator by registered mail a notice describing the nature of
12 the violation, corrective measures to be taken to abate the
13 violation, and the time period for abatement. Within fifteen
14 days of receipt of this notice the operator may request an
15 informal conference with the director to contest the notice. The
16 director may modify, vacate or enforce the notice and shall
17 provide notice to the operator of his action within thirty days
18 of the informal conference. If the operator fails to comply with
19 the notice, as amended by the director, in the time prescribed
20 within the notice, the director shall file a formal complaint
21 with the commission for suspension or revocation of the permit,
22 and for forfeiture of bond, or for appropriate corrective
23 measures. When the director files a formal complaint, the
24 commission shall cause to have issued and served upon the person
25 complained against a written notice together with a copy of the

1 formal complaint, which shall specify the provision of sections
2 444.760 to 444.790 or the rule or regulation or the condition of
3 the permit or of the bond of which the person is alleged to be in
4 violation, a statement of the manner in, and the extent to which,
5 the person is alleged to be in violation. The person complained
6 against may, within fifteen days of receipt of the complaint,
7 request a hearing before the commission. Such hearing shall be
8 conducted in accordance with the provisions of section 444.789.

9 3. After due consideration of the hearing record, or upon
10 failure of the operator to request a hearing by the date
11 specified in the complaint, the commission shall issue and enter
12 such final order and make such final determination as it shall
13 deem appropriate under the circumstances. Included in such order
14 and determination may be the revocation of any permit and to
15 cease and desist operations. The commission shall immediately
16 notify the respondent of its decision in writing by certified
17 mail.

18 4. Any final order or determination or other final action
19 by the commission shall be approved in writing by at least four
20 members of the commission. The commission shall not issue any
21 permit to any person who has had a permit revoked until the
22 violation that caused the revocation is corrected to the
23 satisfaction of the commission. Any final order of the
24 commission can be appealed in accordance with chapter 536, RSMo.

25 5. If the suit filed pursuant to subsection 1 of this

1 section alleges that the violation of operating without a permit
2 constitutes fraud in purporting to be exempted by the provisions
3 of sections 444.762 to 444.787 for excavations for purposes of
4 construction or land improvement, and the court imposed civil
5 penalties for a violation, additional penalties may be levied at
6 the discretion of the court for up to double the cumulative total
7 of penalties authorized by subsection 1 of this section.